



March 25, 2005

ENGROSSED SENATE BILL No. 459

DIGEST OF SB 459 (Updated March 24, 2005 12:14 pm - DI 113)

Citations Affected: IC 6-3.1; IC 21-9; noncode.

Synopsis: Health benefit plan credit. Allows an employer with at least one full-time employee to take a tax credit related to making a health benefit plan available to the employer's employees. Provides that up to \$2,000 in contributions to a family college savings account may be deducted from adjusted gross income. Reduces the number of appointed directors of the education savings authority from five to three. Codifies an expired noncode provision that requires the treasurer of state and the board for depositories to provide clerical support, office space and services, and financial support to the education savings authority.

Effective: July 1, 2005; January 1, 2006.

Dillon, Simpson, Lanane

(HOUSE SPONSORS — LEONARD, ORENTLICHER, AYRES)

January 18, 2005, read first time and referred to Committee on Tax and Fiscal Policy.
February 24, 2005, reported favorably — Do Pass.
February 28, 2005, read second time, amended, ordered engrossed.
March 1, 2005, engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 10, 2005, read first time and referred to Committee on Ways and Means.
March 24, 2005, amended, reported — Do Pass.

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ES 459—LS 7713/DI 103+



March 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 459

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-3-2-20 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2006]: **Sec. 20. (a) Each taxable year, an individual**
4 **who makes a contribution to a college choice 529 investment plan**
5 **established under IC 21-9 for the benefit of a dependent of the**
6 **individual may deduct from the individual's adjusted gross income**
7 **(as defined in IC 6-3-1-3.5(a)) the lesser of:**
8 **(1) the amount of the contribution made by the individual**
9 **during the taxable year; or**
10 **(2) two thousand dollars (\$2,000).**
11 **(b) Notwithstanding subsection (a), a husband and wife filing a**
12 **joint adjusted gross income tax return for a particular taxable year**
13 **may not claim a deduction under this section of more than two**
14 **thousand dollars (\$2,000).**
15 SECTION 2. IC 6-3.1-25 IS ADDED TO THE INDIANA CODE
16 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2005]:

ES 459—LS 7713/DI 103+



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Chapter 25. Credit for Offering Health Benefit Plans

Sec. 1. This chapter applies to an employer that:

- (1) employs at least one (1) full-time employee who is located in Indiana; and
- (2) does not offer coverage for health care services under a self-funded health benefit plan that complies with the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

Sec. 2. As used in this chapter, "eligible benefits" means, with respect to an employee of a taxpayer that claims a credit under section 9 of this chapter, the total amount of health insurance premiums not included in the employee's federal adjusted gross income (as defined in Section 62 of the Internal Revenue Code) during a taxable year under the health benefit plan offered by the employer.

Sec. 3. As used in this chapter, "eligible taxpayer" means a taxpayer that did not provide health insurance to the taxpayer's employees in the taxable year immediately preceding the first taxable year for which the taxpayer claims a credit under this chapter.

Sec. 4. As used in this chapter, "full-time employee" means an employee who is normally scheduled to work at least thirty (30) hours each week.

Sec. 5. (a) As used in this chapter, "health benefit plan" means coverage for health care services provided under:

- (1) an insurance policy that provides one (1) or more of the types of insurance described in Class 1(b) or Class 2(a) of IC 27-1-5-1; or
- (2) a contract with a health maintenance organization for coverage of basic health care services under IC 27-13;

that satisfies the requirements of Section 125 of the Internal Revenue Code.

(b) The term does not include the following:

- (1) Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.
- (2) Coverage issued as a supplement to liability insurance.
- (3) Automobile medical payment insurance.
- (4) A specified disease policy issued as an individual policy.
- (5) A limited benefit health insurance policy issued as an individual policy.
- (6) A short term insurance plan that:
 - (A) may not be renewed; and

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(B) has a duration of not more than six (6) months.

(7) A policy that provides a stipulated daily, weekly, or monthly payment to an insured during hospital confinement, without regard to the actual expense of the confinement.

(8) Worker's compensation or similar insurance.

(9) A student health insurance policy.

Sec. 6. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) limited liability company; or

(4) limited liability partnership.

Sec. 7. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);

(2) IC 6-5.5 (financial institutions tax); and

(3) IC 27-1-18-2 (insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 8. As used in this chapter, "taxpayer" means an individual or entity that:

(1) has state tax liability; and

(2) employs at least one (1) full-time employee who is located in Indiana.

Sec. 9. (a) An eligible taxpayer that, after December 31, 2005, makes health insurance available to the eligible taxpayer's employees and their dependents through at least one (1) health benefit plan is entitled to a credit against the taxpayer's state tax liability for the first two (2) taxable years in which the taxpayer makes the health benefit plan available if the following requirements are met:

(1) An employee's participation in the health benefit plan is at the employee's election.

(2) If an employee chooses to participate in the health benefit plan, the employee may pay the employee's share of the cost of the plan using a wage assignment authorized under IC 22-2-6-2.

(b) The credit allowed under this chapter equals the lesser of:

(1) two thousand five hundred dollars (\$2,500); or

(2) fifty dollars (\$50) multiplied by the number of employees enrolled in the health benefit plan during the taxable year.

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1 **Sec. 10. (a) An employer may pay or provide reimbursement for**
 2 **all or part of the cost of a health benefit plan made available under**
 3 **section 9 of this chapter.**

4 **(b) An employer that pays or provides reimbursement under**
 5 **subsection (a) shall pay or provide reimbursement on an equal**
 6 **basis for all full-time employees who elect to participate in the**
 7 **health benefit plan.**

8 **Sec. 11. (a) If the amount determined under section 9 of this**
 9 **chapter for a taxpayer in a taxable year exceeds the taxpayer's**
 10 **state tax liability for that taxable year, the taxpayer may carry the**
 11 **excess over to the following taxable years. The amount of the credit**
 12 **carryover from a taxable year shall be reduced to the extent that**
 13 **the carryover is used by the taxpayer to obtain a credit under this**
 14 **chapter for any subsequent taxable year. A taxpayer is not entitled**
 15 **to a carryback.**

16 **(b) A taxpayer is not entitled to a refund of any unused credit.**

17 **Sec. 12. If a pass through entity does not have state income tax**
 18 **liability against which the tax credit may be applied, a shareholder**
 19 **or partner of the pass through entity is entitled to a tax credit equal**
 20 **to:**

21 **(1) the tax credit determined for the pass through entity for**
 22 **the taxable year; multiplied by**

23 **(2) the percentage of the pass through entity's distributive**
 24 **income to which the shareholder or partner is entitled.**

25 **Sec. 13. To receive the credit provided by this chapter, a**
 26 **taxpayer must claim the credit on the taxpayer's state tax return**
 27 **or returns in the manner prescribed by the department. The**
 28 **taxpayer must submit to the department all information that the**
 29 **department determines is necessary to calculate the credit**
 30 **provided by this chapter and to determine the taxpayer's eligibility**
 31 **for the credit.**

32 **Sec. 14. (a) A taxpayer claiming a credit under this chapter shall**
 33 **continue to make health insurance available to the taxpayer's**
 34 **employees through a health benefit plan for at least twenty-four**
 35 **(24) consecutive months beginning on the day after the last day of**
 36 **the taxable year in which the taxpayer first offers the health benefit**
 37 **plan.**

38 **(b) If the taxpayer terminates the health benefit plan before the**
 39 **expiration of the period required under subsection (a), the**
 40 **taxpayer shall repay the department the amount of the credit**
 41 **received under section 9 of this chapter.**

42 **SECTION 3. IC 21-9-4-1 IS AMENDED TO READ AS FOLLOWS**

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[EFFECTIVE JANUARY 1, 2006]: Sec. 1. (a) The board of directors of the authority is established. The board consists of the following:

(1) The following four (4) ex officio members or directors:

- (A) The treasurer of state.
- (B) The state superintendent of public instruction.
- (C) The Indiana commissioner of higher education.
- (D) The budget director.

(2) ~~Five (5)~~ **Three (3)** appointed members or directors who:

- (A) are appointed by the governor; and
- (B) have knowledge, skill, and experience in academic, business, financial, or education fields.

(b) During a member's term of service on the board, an appointed member of the board may not be an official or employee of the state.

(c) Not more than ~~three (3)~~ **two (2)** of the appointed members of the board may belong to the same political party.

(d) An appointed member serves a four (4) year term. An appointed member shall hold over after the expiration of the member's term until the member's successor is appointed and qualified.

(e) The governor may reappoint an appointed member of the board.

(f) A vacancy shall be filled for the balance of an unexpired term in the same manner as the original appointment.

(g) The treasurer of state shall serve as chairman of the board. The board shall annually elect one (1) of its ex officio members as vice chairman, and may elect any other officer that the board desires.

(h) The governor may remove an appointed member for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing, unless the member expressly waives the notice and hearing in writing.

SECTION 4. IC 21-9-4-5 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JANUARY 1, 2006]: Sec. 5. (a) ~~Five (5)~~ **Four (4)** members of the board are a quorum for:

- (1) the transaction of business at a meeting of the board; or
- (2) the exercise of a power or function of the authority.

(b) This subsection applies to a meeting of the board at which at least ~~five (5)~~ **four (4)** members of the board are physically present at the place where the meeting is conducted. A member of the board may participate in a meeting of the board by using a means of communication that permits:

- (1) the member;
- (2) all other members participating in the meeting; and
- (3) all members of the public physically present at the place where the meeting is conducted;

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to simultaneously communicate with each other during the meeting. A member who participates in a meeting described in this subsection is considered to be present at the meeting. If a meeting is held under this subsection, the memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who was physically present at the place where the meeting was conducted, who participated in the meeting by using a means of communication described in this subsection, and who was absent from the meeting.

(c) The affirmative vote of a majority of all the members of the board who are present is necessary for the authority to take action. A vacancy in the membership of the board does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the board under this article may be authorized by:

- (1) resolution at any regular or special meeting; or
- (2) unanimous consent of all the members who have not abstained.

A resolution takes effect immediately upon adoption and need not be published or posted.

(d) The board shall meet at the call of the chairman and as provided in the bylaws of the authority.

(e) Meetings of the board may be held anywhere in Indiana.

SECTION 5. IC 21-9-10-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 5. The treasurer of state and the board for depositories shall cooperate and provide to the Indiana education savings authority the following:**

- (1) Clerical and professional staff and related support.
- (2) Office space and services.
- (3) Reasonable financial support for the development of rules, policies, programs, and guidelines, including authority operations and travel.

SECTION 6. [EFFECTIVE JANUARY 1, 2006] **IC 6-3-2-20, as added by this act, applies to taxable years beginning after December 31, 2005.**

SECTION 7. [EFFECTIVE JULY 1, 2005] **IC 6-3.1-25, as added by this act, applies only to taxable years beginning after December 31, 2005.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 459, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 459 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Senator Simpson be added as coauthor of Senate Bill 459.

DILLON

SENATE MOTION

Madam President: I move that Senate Bill 459 be amended to read as follows:

Page 4, line 13, delete "6-3.1-25-15(a)." and insert **"6-3.1-25-15(a) or IC 6-3.1-25-15-(b)."**

Page 10, delete lines 11 through 14, begin a new paragraph and insert:

"(b) For each taxable year following the taxable year described in subsection (a)(2), a percentage of an employee's eligible benefits are included in the employee's state adjusted gross income (as defined in IC 6-3-1-3.5(a)) as follows:

(1) For an employee whose annual income derived from the taxpayer is forty thousand dollars (\$40,000) or less, zero percent (0%).

(2) For an employee whose annual income derived from the taxpayer is greater than forty thousand dollars (\$40,000) and less than eighty thousand dollars (\$80,000), fifty percent (50%).

(3) For an employee whose annual income derived from the taxpayer is eighty thousand dollars (\$80,000) or greater, one hundred percent (100%)."

Page 10, line 15, delete (b) and insert **"(c)"**.

(Reference is to SB 459 as printed February 25, 2005.)

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SENATE MOTION

Madam President: I move that Senator Lanane be added as coauthor of Engrossed Senate Bill 459.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 459, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 6, begin a new paragraph and insert:

"SECTION 1. IC 6-3-2-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 20. (a) Each taxable year, an individual who makes a contribution to a college choice 529 investment plan established under IC 21-9 for the benefit of a dependent of the individual may deduct from the individual's adjusted gross income (as defined in IC 6-3-1-3.5(a)) the lesser of:**

- (1) the amount of the contribution made by the individual during the taxable year; or**
- (2) two thousand dollars (\$2,000).**

(b) Notwithstanding subsection (a), a husband and wife filing a joint adjusted gross income tax return for a particular taxable year may not claim a deduction under this section of more than two thousand dollars (\$2,000)."

Page 7, line 6, delete "ten (10) full-time employees who are" and insert **"one (1) full-time employee who is"**.

Page 8, line 27, delete "ten (10) full-time employees who are" and insert **"one (1) full-time employee who is"**.

Page 10, delete lines 3 through 33, begin a new paragraph and insert:

"SECTION 3. IC 21-9-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 1. (a) The board of directors of the authority is established. The board consists of the following:**

- (1) The following four (4) ex officio members or directors:**
 - (A) The treasurer of state.**
 - (B) The state superintendent of public instruction.**
 - (C) The Indiana commissioner of higher education.**
 - (D) The budget director.**

- (2) ~~Five (5)~~ Three (3) appointed members or directors who:**

- (A) are appointed by the governor; and**
- (B) have knowledge, skill, and experience in academic, business, financial, or education fields.**

(b) During a member's term of service on the board, an appointed member of the board may not be an official or employee of the state.

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(c) Not more than ~~three (3)~~ **two (2)** of the appointed members of the board may belong to the same political party.

(d) An appointed member serves a four (4) year term. An appointed member shall hold over after the expiration of the member's term until the member's successor is appointed and qualified.

(e) The governor may reappoint an appointed member of the board.

(f) A vacancy shall be filled for the balance of an unexpired term in the same manner as the original appointment.

(g) The treasurer of state shall serve as chairman of the board. The board shall annually elect one (1) of its ex officio members as vice chairman, and may elect any other officer that the board desires.

(h) The governor may remove an appointed member for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing, unless the member expressly waives the notice and hearing in writing.

SECTION 4. IC 21-9-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 5. (a) ~~Five (5)~~ **Four (4)** members of the board are a quorum for:

- (1) the transaction of business at a meeting of the board; or
- (2) the exercise of a power or function of the authority.

(b) This subsection applies to a meeting of the board at which at least ~~five (5)~~ **four (4)** members of the board are physically present at the place where the meeting is conducted. A member of the board may participate in a meeting of the board by using a means of communication that permits:

- (1) the member;
- (2) all other members participating in the meeting; and
- (3) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting. A member who participates in a meeting described in this subsection is considered to be present at the meeting. If a meeting is held under this subsection, the memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who was physically present at the place where the meeting was conducted, who participated in the meeting by using a means of communication described in this subsection, and who was absent from the meeting.

(c) The affirmative vote of a majority of all the members of the board who are present is necessary for the authority to take action. A vacancy in the membership of the board does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the board under this article may be

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authorized by:

- (1) resolution at any regular or special meeting; or
- (2) unanimous consent of all the members who have not abstained.

A resolution takes effect immediately upon adoption and need not be published or posted.

(d) The board shall meet at the call of the chairman and as provided in the bylaws of the authority.

(e) Meetings of the board may be held anywhere in Indiana.

SECTION 5. IC 21-9-10-5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JANUARY 1, 2006]: **Sec. 5. The treasurer of state and the board for depositories shall cooperate and provide to the Indiana education savings authority the following:**

- (1) Clerical and professional staff and related support.**
- (2) Office space and services.**
- (3) Reasonable financial support for the development of rules, policies, programs, and guidelines, including authority operations and travel.**

SECTION 6. [EFFECTIVE JANUARY 1, 2006] **IC 6-3-2-20, as added by this act, applies to taxable years beginning after December 31, 2005."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 459 as reprinted March 1, 2005.)

ESPICH, Chair

Committee Vote: yeas 21, nays 0.

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